

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>CONSUMERS ENERGY COMPANY</b>	)	
for a certificate of public convenience and necessity	)	
to construct and operate the 24-inch Zilwaukee to	)	Case No. U-18166
Clawson Pipeline (Saginaw Trail Pipeline).	)	
_____	)	

At the March 28, 2017 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner  
Hon. Rachael A. Eubanks, Commissioner

**ORDER APPROVING SETTLEMENT AGREEMENT**

On September 2, 2016, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, pursuant to the provisions of 1929 PA 9, MCL 483.101 *et seq.*, requesting a certificate of public convenience and necessity to construct and operate the 24-inch Zilwaukee to Clawson Pipeline (Saginaw Trail Pipeline) in the counties of Saginaw, Genesee, and Oakland.

A prehearing conference was held on October 26, 2016, before Administrative Law Judge Martin D. Snider. Consumers and the Commission Staff (Staff) participated in the proceedings. Subsequently, the parties submitted a settlement agreement resolving all issues in the case.

According to the terms of the settlement agreement, attached as Exhibit A, the parties agree that the proposed, approximately 94-mile pipeline will be 24 inches in diameter, and will extend in a southerly direction from Consumers' Zilwaukee Junction in Section 35, T13N, R3E, Tittabawassee Township, Saginaw County, to a point of interconnection with Line 2800 at Consumers' Clawson Control Station in Section 33, T2N, R7E, Milford Township, Oakland County. The parties further agree that the Saginaw Trail Pipeline is designed to operate at a maximum allowable operating pressure of 960 pounds per square inch. The parties also agree that Consumers will construct and operate the Saginaw Trail Pipeline in a manner that meets or exceeds applicable standards contained in the Michigan Gas Safety Standards, MCL 483.151 *et seq.* Consumers estimates the cost of the project to be \$610 million.<sup>1</sup>

The Commission has reviewed the application, testimony, exhibits, and settlement agreement, and finds the settlement agreement is reasonable and in the public interest, and should be approved. The Commission finds that the map, route, and type of construction are reasonable and should be approved, subject to such changes in location as Consumers may find necessary upon actual construction. The Commission finds that the Saginaw Trail Pipeline, when constructed and in operation, will serve the convenience and necessity of the public.

The Commission has reviewed Consumers' environmental report as well as its application, exhibits, and testimony filed in this docket. The Commission notes that the Saginaw Trail Pipeline will replace a pipeline that was installed in 1942 on a route that, over time, has experienced significant residential and commercial development. In its

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<sup>1</sup> The Commission does not approve costs as part of an Act 9 proceeding. The question of whether Consumers may recover contingency costs in its rates must be determined in a contested case proceeding as required by state law. The Commission most recently discussed its position on contingency costs in its February 28, 2017 order in Consumers' last electric rate case, Case No. U-17990.

environmental report, Consumers evaluated the alternatives to the proposed Saginaw Trail Pipeline. The company maintains that “no action” is not a feasible alternative because Consumers is required by law to maintain the integrity of the existing pipeline. Additionally, the risks to public health, safety, and the environment that could result from inaction merit rejecting this option. Consumers also considered permanent repairs to a segment of the existing pipeline in lieu of retiring and replacing that segment. Consumers maintains this alternative provides no advantage over replacement in attempting to minimize environmental impacts, nor is it cost effective. The Commission agrees with Consumers that the most practical and least intrusive method of maintaining the existing pipeline is to replace the identified segment. Consumers also considered other pipeline routes. According to the company, it is not feasible to follow the existing pipeline through Flint or Saginaw given the residential and commercial development that has occurred along that route since its installation in 1942. The Commission finds other routes are not feasible.

With respect to the project’s geological impact including the potential for earthquakes, ground shaking, surface rupture, and related seismic activity for the project area, the report identifies the risk as low. Similarly, the entire pipeline route is located in an area with moderate to low landslide susceptibility and a low incidence for landslides. Furthermore, no known karst formations are located in the project area. Consumers identifies some risk of soil erosion, compaction, and rutting, but also provides mitigation measures to be followed during the pipeline construction and restoration activity, such as the use of erosion and sedimentation control devices, topsoil segregation, reseeding, and tilling. Regarding drinking water resources and supplies, the report acknowledges that there are 212 wells within 200 feet of the project’s assessment corridor. Consumers has identified measures it will take during the

project to avoid direct impacts to well users and also to avoid or minimize the potential impacts of hazardous material spills during construction. Regarding crossing the Tittabawassee River, Consumers will work with the Michigan Department of Natural Resources (MDNR) and the Michigan Department of Environmental Quality regarding any required special construction techniques or timing restriction. Consumers maintains that the overall effect on local surface water quality will be minor and short-term. The company will employ impact minimization and restoration methods to mitigate impacts on riparian areas and promote re-vegetation success.

The proposed 75-foot wide pipeline construction corridor will cross 249 wetlands for a total of 94.3 acres. Consumers states in its environmental report that wetland construction will be performed in accordance with state law and the Federal Energy Regulatory Commission plan and procedures, which contain wetland mitigation measures designed to minimize overall area and duration of wetland disturbance, reduce the amount of wetland soil disturbance, and enhance wetland restoration following construction. The project crosses through different types of land use. Consumers indicates that it will reach agreements with property owners of agricultural land to provide fair compensation for crop damages or losses. The report explains the impact to open land will be temporary and short term. The report has identified 725 residential structures within 200 feet of the proposed centerline. Consumers indicates construction activities near residences will be completed as quickly as possible in order to minimize disturbances to properties. The company will work with landowners and will provide access to residences throughout construction.

Regarding threatened and endangered species, Consumers identified eight federally-listed species with habitats that may be present within the project area and seven state-listed species

that occur within the vicinity of the project. Consumers will coordinate with the MDNR and Michigan Natural Features Inventory staff to determine best management practices concerning state listed species, and will consult with the U.S. Fish and Wildlife Service as necessary to identify effects the project may have on the federally-listed species and to develop avoidance, conservation, or mitigation measures for potentially affected federally listed species.

Having reviewed Consumers' environmental report, application, and additional testimony and exhibits, the Commission concludes that, given mitigation steps Consumers has agreed to employ to minimize adverse environmental impacts, any environmental impairment caused by the proposed pipeline is "*de minimis*" and is consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction. The filed application, testimony, and exhibits of the parties support and satisfy the required agency review and environmental obligations of the Commission that arise from the Michigan Environmental Protection Act, Part 17 of the Natural Resources and Environmental Protection Act, MCL 324.101 *et seq.*

THEREFORE, IT IS ORDERED that:

A. The settlement agreement, attached as Exhibit A, is approved.

B. Consumers Energy Company is authorized to construct and operate the 24-inch Saginaw Trail Pipeline in Saginaw, Genesee, and Oakland counties as proposed in its application and subject to the requirements of 1929 PA 9, MCL 483.101 *et seq.*

C. The map, route, and type of construction of the 24-inch Saginaw Trail Pipeline as proposed by Consumers Energy Company are approved; however, the company shall not begin construction until all necessary easements and permits have been acquired.

D. Consumers Energy Company shall make all filings and provide the Commission Staff all information as set forth in the Saginaw Trail Pipeline annual report requirements, provided in Attachment 1 of the settlement agreement.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General – Public Service Division at [pungpl@michigan.gov](mailto:pungpl@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General – Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

By its action of March 28, 2017.

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Norman J. Saari, Commissioner

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Kavita Kale, Executive Secretary

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Rachael A. Eubanks, Commissioner

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of	)	
CONSUMERS ENERGY COMPANY	)	
for a Certificate of Public Convenience and	)	Case No. U-18166
Necessity to Construct and Operate the	)	
24-inch Zilwaukee to Clawson Pipeline	)	
(Saginaw Trail Pipeline – Line 2800)	)	
_____	)	

**SETTLEMENT AGREEMENT**

On September 2, 2016, Consumers Energy Company (“Consumers Energy” or the “Company”) filed an Application with the Michigan Public Service Commission (“MPSC” or the “Commission”), pursuant to 1929 PA 9, MCL 483.101 *et seq.*, for a Certificate of Public Convenience and Necessity to Construct and Operate the proposed 24-inch Zilwaukee to Clawson Pipeline (Saginaw Trail Pipeline - Line 2800). Consumers Energy filed testimony and exhibits in support of its positions concurrently with its Application.

The initial pre-hearing conference in this case was held on October 26, 2016 before Administrative Law Judge Martin D. Snider. The parties to the case are Consumers Energy and the Commission Staff (“Staff”). On January 18, 2017, Staff filed testimony and exhibits. On February 1, 2017, Consumers Energy filed rebuttal testimony and exhibits. An evidentiary hearing was held on February 21, 2017.

For purposes of settlement of all issues in Case No. U-18166, the undersigned parties agree and stipulate as follows:

1. Consumers Energy has requested authority to construct and operate a 24-inch outside diameter pipeline to replace the existing Line 2800 Pipeline between Consumers Energy’s Zilwaukee Junction in Section 35, T13N, R3E, Tittabawassee Township, Saginaw

County and Consumers Energy's Clawson Control Station in Section 33, T2N, R7E, Milford Township, Oakland County ("Proposed Pipeline" or the "Saginaw Trail Pipeline"). The Saginaw Trail Pipeline will be approximately 94.45 miles in length.

2. The parties agree that Consumers Energy will construct and operate the Proposed Pipeline in a manner that meets or exceeds applicable codes, standards, and construction practices, including those contained in the Michigan Gas Safety Standards, MCL 483.151 et seq. Abandonment or deactivation of any of the replaced Line 2800 pipeline will be performed in accordance with the Michigan Gas Safety Standards.

3. The parties agree that the Proposed Pipeline will serve the public interest. Among other things, the Proposed Pipeline will: (i) address the high number of corrosion-related and manufacturing anomalies identified on Line 2800 between Zilwaukee and Clawson; (ii) reduce the risk of an unplanned outage on Line 2800, and as a result reduce the risks of supply capacity restrictions and cuts, of being unable to fully refill storage at lower summer natural gas prices, and of customer load curtailments; (iii) increase transmission capacity as the natural gas transmission system approaches its pressure and capacity limits under design peak day conditions; and (iv) position the Company's natural gas transmission system for future demand growth and flexibility.

4. The parties agree that the Saginaw Trail Pipeline will be used, in conjunction with existing facilities, to transport supplies of natural gas which will be used by Consumers Energy to serve the needs of its MPSC jurisdictional customers. The parties agree that the Proposed Pipeline will remediate pipeline integrity concerns and eliminate a capacity bottleneck that currently exists on Line 2800 during design day peak conditions. Consumers Energy and Staff agree that the Proposed Pipeline will serve the public convenience and necessities and,



when constructed, tested, and operated as proposed, will be reasonable and in the public interest.

5. As proposed by Consumers Energy, the Saginaw Trail Pipeline will have an outside diameter of 24 inches. The parties agree that construction of the Saginaw Trail Pipeline with 24 inch pipe will eliminate the alternative Line 1900 24-inch and 36-inch looping project described in the testimony and exhibits of Company witness Jeremy G. Willett in this proceeding at this time.

6. Consumers Energy has undertaken an environmental assessment for the Proposed Pipeline. The parties agree that specific construction mitigation measures will be employed to minimize adverse impacts of the project. A copy of the Environmental Report is included in the record of this proceeding as Exhibit A-5 (LAJ-1).

7. The parties agree that rights-of-way have been or will be secured across all privately owned parcels through which the Proposed Pipeline will be constructed. The Proposed Pipeline will largely be located on the existing pipeline rights-of-way. However, the Company plans to reroute the Proposed Pipeline around the urban areas west of Saginaw and east of Flint. Consumers Energy will mitigate each right-of-way situation on a case-by-case basis, which may include altering the proposed route to the opposite side of the existing pipeline to increase the distance from residences; decreasing the spacing between the Proposed Pipeline and the existing pipeline; constructing the Proposed Pipeline with additional depth of cover; and directionally boring to minimize the surface impact in congested areas.

8. Consumers Energy agrees to work with landowners to minimize disruptions to farming activities during construction of the Proposed Pipeline and will make good faith efforts to complete final restoration as soon as reasonably possible but no later than ten months from the completion of pipeline installation and backfilling.

9. The Company will obtain all necessary environmental and other permits from the Michigan Department of Natural Resources, the Michigan Department of Environmental Quality's Water Resources Division, the Michigan State Historic Preservation Office ("SHPO"), the Michigan Department of Transportation, and the Michigan Natural Features Inventory before construction begins on those sections of the Proposed Pipeline requiring such permits. Consumers Energy will obtain guidance from the Michigan SHPO as to proper procedures to assess and mitigate any impacts to historic properties along the entire route of the Proposed Pipeline.

10. Consumers Energy will make good faith efforts to construct the Proposed Pipeline pursuant to the following schedule:

- Phase 1 (Evon to Clio) – constructed in 2017-2018;
- Phase 2 (Zilwaukee to Evon) – constructed in 2018-2019;
- Phase 3 (Clio to Grand Blanc) – constructed in 2019-2020;
- Phase 4 (Grand Blanc to Wardlow) – constructed in 2020-2021; and
- Phase 5 (Wardlow to Clawson) – constructed in 2021-2022.

In the event a particular Phase cannot be completed in the year specified, Consumers Energy may delay such Phase or a section of such Phase, as well as the Phases that follow, to subsequent years. Similarly, Consumers Energy will accelerate the schedule specified above to the extent feasible. Consumers Energy's revisions to the above schedule or pipeline length of a particular Phase shall be made upon consultation with Staff. Unless otherwise agreed to by the Company and Staff, construction of each Phase of the Saginaw Trail Pipeline will be completed (i.e. connected, hydro tested, and in service), and the Company will file a completion report of each Phase with the Commission, before the Company begins construction of the next Phase.

11. Prior to construction of Phases 2 through 5 specified above, Consumers Energy will meet with Staff to discuss in detail road, rail, river, and stream crossings; landowner impacts; existing easement rights; and additional right-of-way requirements. The Company agrees to provide Staff monthly updates related to the general right-of-way requirements, right-of-way and easement process, and construction progress during each Phase of construction. The Company will follow the Saginaw Trail Pipeline Annual Report Requirements attached to this Agreement as Attachment 1 and included in the record as Staff Exhibit S-7 in this proceeding.

12. This Settlement Agreement does not address or resolve the rate-making treatment of the costs associated with the construction of the Saginaw Trail Pipeline. The parties agree that the reasonable and prudent cost of construction of the Saginaw Trail Pipeline should be considered to be recoverable in the Company's rates in a rate case proceeding.

13. Although there will be minor impairment to the environment if the pipeline is constructed as proposed, there is no other feasible and prudent alternative to this impairment. Given mitigation steps Consumers Energy will employ to minimize adverse environmental impacts, any environmental impairment caused by the Proposed Pipeline is "*de minimis*" and is consistent with the promotion of the public health, safety, and welfare in light of the State's paramount concern for the protection of its natural resources from pollution, impairment, or destruction. The parties agree that the Commission should find that the filed Application, testimony, and exhibits of the parties support and satisfy the required agency review and environmental obligations of the Commission that inure from the Michigan Environmental Protection Act, Part 17 of the Natural Resources Environmental Protection Act, MCL 324.101 et seq..

14. The parties agree that the Commission should approve Consumers Energy's request for authority to construct and operate the Saginaw Trail Pipeline and should determine that such line, when constructed and operated, will serve the convenience and necessities of the public.

15. The parties request that the Commission issue an order: (i) approving this Settlement Agreement; (ii) authorizing Consumers Energy to construct and operate the entirety of the proposed Saginaw Trail Pipeline subject to the terms in this Settlement Agreement; (iii) approving the route of the proposed Saginaw Trail Pipeline and the map showing the route which was filed as Exhibit A to the Application, subject to such changes in location as Consumers Energy may find necessary upon actual construction; (iv) approving the type of construction proposed by Consumers Energy for the Saginaw Trail Pipeline; and (v) finding that such line, when constructed and in operation, will serve the convenience and necessities of the public.

16. This Settlement Agreement is entered into for the sole and express purpose of reaching a compromise among the parties. All offers of settlement and discussions relating to this settlement are, and shall be considered, privileged under MRE 408. If the Commission approves this Settlement Agreement without modification, neither the parties to this Settlement Agreement nor the Commission shall make any reference to, or use, this Settlement Agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided, however, such references may be made to enforce or implement the provisions of this Settlement Agreement and the order approving it.

17. This Settlement Agreement is based on the facts and circumstances of this case

and is intended for final disposition of Case No. U-18166. So long as the Commission approves this Settlement Agreement without any modification, the parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement. Except as otherwise set forth herein, the parties agree and understand that this Settlement Agreement does not limit any party's right to take new and/or different positions on similar issues in other administrative proceedings, or appeals related thereto.

18. This Settlement Agreement is not severable. Each provision of this Settlement Agreement is dependent upon all other provisions of this Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of this Settlement Agreement, this Settlement Agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation positions of the parties.

19. The parties agree that approval of this Settlement Agreement by the Commission would be reasonable and in the public interest.

20. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969 (MCL 24.281), as it applies to the issues resolved in this Settlement Agreement, if the Commission approves this Settlement Agreement without modification.

WHEREFORE, the undersigned parties hereto respectfully request the Michigan Public Service Commission to approve this Settlement Agreement on an expeditious basis and to make it effective in accordance with its terms by final order.


MICHIGAN PUBLIC SERVICE COMMISSION STAFF



By: \_\_\_\_\_

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Attorney for the Commission Staff

CONSUMERS ENERGY COMPANY



Digitally signed by  
Gary A. Gensch, Jr.  
Date: 2017.03.09  
13:23:59 -05'00'

By: \_\_\_\_\_

Kelly M. Hall (P48083)  
Gary A. Gensch, Jr. (P66912)  
One Energy Plaza  
Jackson, MI 49201  
Attorneys for Consumers Energy Company

# ATTACHMENT 1

### **Saginaw Trail Pipeline Annual Report Requirements**

The Annual Report and the Plan Requirements shall be completed each year until the Saginaw Trail Pipeline Project is complete. MPSC Staff will be granted 60 days to review and request clarification.

#### **Annual Report**

##### **Preceding Construction Year**

*Shall be filed in the U-18166 docket within 60 days after completion of construction.*

1. As-built alignment maps showing the following information:
  - a. New pipeline
  - b. Existing pipeline abandoned in place
  - c. Locations of bores or directional drills
2. Pressure test reports for the newly constructed pipeline
3. Detailed year-to-date cost breakdown showing the following detail for construction of segments in the preceding year:
  - a. Survey
  - b. Permitting
  - c. Legal
  - d. Real Estate
  - e. Right of way & Easement
  - f. Materials – pipe
  - g. Materials – other
  - h. Engineering and Design
  - i. Construction
  - j. Environmental
  - k. Lab Services
  - l. Misc Other Services
  - m. Admin & General Overhead
  - n. Total cost
4. Narrative describing any notable circumstances including but not limited to:
  - a. Route deviations from the Plan Report for the segment
  - b. Significant unexpected costs
  - c. Significant unexpected cost savings
  - d. Ongoing landowner or environmental impacts
  - e. Ongoing legal issues
  - f. Restoration status



Subsequent Construction Year

*Shall be filed in the U-18166 docket no later than December 1<sup>st</sup> of each year.*

1. Detailed expected cost breakdown of constructed segments showing the following detail for construction in the subsequent year. Include contingencies as a separate amount for each line item.
  - a. Survey
  - b. Permitting
  - c. Legal
  - d. Real Estate
  - e. Right of way & Easement
  - f. Materials – pipe
  - g. Materials – other
  - h. Engineering and Design
  - i. Construction
  - j. Environmental
  - k. Lab Services
  - l. Misc Other Services
  - m. Admin & General Overhead
  - n. Total cost not including contingencies
  - o. Total cost including contingencies
2. List of all required permits for the subsequent year construction with a status update for each permit.

**Additional Plan Requirements for Subsequent year construction**

*Shall be submitted to Staff no later than December 1<sup>st</sup> of each year.*

1. Provide staff with a .kmz file including the following layers at a minimum:
  - a. Proposed pipeline
  - b. Existing pipelines
  - c. Parcels with landowner information
  - d. Bores or directional drills
  - e. Permanent right of way needed
  - f. Permanent right of way owned (if width is defined)
  - g. Temporary work space
  - h. Wetlands
2. Provide Staff with one set of 11" x 17" printouts of the most current alignment sheets for the proposed subsequent year construction.